

BEFORE THE GROWTH MANAGEMENT HEARINGS BOARD
WESTERN WASHINGTON REGION
STATE OF WASHINGTON

JOHN WILSON,

Petitioner,

v.

CITY OF TUMWATER AND THURSTON
REGIONAL PLANNING COUNCIL,

Respondents.

Case No. 14-2-0004

ORDER OF DISMISSAL

This matter comes before the Board pursuant to the City of Tumwater's Motion to Dismiss for Lack of Jurisdiction.¹ The City argues dismissal is appropriate as the Board lacks "subject matter jurisdiction pursuant to RCW 36.70A.280(1) due to a failure to allege a Growth Management Act violation. The City also asserts the Petitioner lacks participation standing to challenge Ordinance No. 02014-001, one of the ordinances referenced in Petitioner's Petitions for Review. The Petitioner did file a pleading entitled "Index (Petitioner to File)—Objections" on April 14, 2014. However, that document did not address the issues raised in the City's Motion to Dismiss.²

The City adopted three separate ordinances on January 7, 2014. Ordinance No. 02013-024 involved comprehensive plan changes (the Capital Boulevard Corridor Plan) while No. 02013-025 adopted zoning regulations to implement the Comprehensive Plan amendments. The third ordinance, No. 02014-001, renewed interim zoning in an area referred to as the Brewery Neighborhood Zone. Notice of adoption of the three ordinances was published on January 9, 2014.

¹ Filed April 9, 2014.

² An additional pleading was filed beyond the ten day period allowed for responses to motions but again it failed to address the Motion to Dismiss.

1 On March 7, 2014, John Wilson Group NFC, an individual, filed a Petition for Review,
2 entitled "Re-Petition For Review". Thereafter, on March 10, 2014, Petitioner filed a
3 "Supplemental Petition For Review" and on March 11, 2014, a final pleading entitled
4 "Statement of the Issues". In all three of those filings, Petitioner named the City of Tumwater
5 and the Thurston Regional Planning Council as respondents.

6 The City states none of the Petitioner's pleadings includes the detailed statement of
7 issues required by RCW 36.70A.280. Beyond that, it contends the pleadings failed to
8 include any allegations of GMA noncompliance. Finally, the City contends Petitioner lacks
9 participation standing to challenge Ordinance No. 02014-001.

10 Administrative agencies, such as the Growth Management Hearings Board, are
11 creatures of the Legislature without inherent or common-law powers and, as such, may
12 exercise only those powers conferred by statute, either expressly or by necessary
13 implication.³ A party cannot confer jurisdiction; all that a party does is invoke it. All statutory
14 requirements must be met before jurisdiction is properly invoked.⁴ The relevant statute
15 regarding the Board's jurisdiction is RCW 36.70A.280(1):
16

17 (1) The growth management hearings board shall hear and determine only
18 those petitions alleging either: (a) That a . . . county, or city planning under
19 this chapter is not in compliance with the requirements of this chapter.
20

21 To invoke the Board's jurisdiction to review compliance with the GMA, a party with
22 standing⁵ must comply with the statute's procedural requirements:

23 a) File a petition for review that includes a detailed statement of issues
24 presented for resolution by the Board;⁶

25 b) File the petition for review within 60 days after publication of the notice
26 of adoption of the comprehensive plan and/or development regulations;⁷ and,
27

28
29 ³ *Skagit Surveyors & Eng'rs, LLC v. Friends of Skagit County*, 135 Wn.2d 542, 558 (1998).

30 ⁴ *Dougherty v. Dep't of Labor & Indus.*, 150 Wn.2d 310, 319 (2003); *Fay v. Northwest Airlines*, 115 Wn.2d 194,
31 197 (Wash. 1990).

32 ⁵ Standing is governed by RCW 36.70A.280(2): "A petition may be filed only by: (a) The state, or a county or
city that plans under this chapter; (b) a person who has participated orally or in writing before the county or city
regarding the matter on which a review is being requested; (c) a person who is certified by the governor within
sixty days of filing the request with the board; or (d) a person qualified pursuant to RCW 34.05.530."

⁶ RCW 36.70A.290(1).

⁷ RCW 36.70A.290(2).

1 c) Allege non-compliance with the requirements of the GMA.⁸

2
3 The City acknowledged during the Pre-Hearing Conference that Petitioner had
4 participation standing to challenge Ordinance Nos. 02013-024 and 02013-025.⁹ However, it
5 states Petitioner lacks standing in regards to Ordinance No. 02014-001. That assertion is
6 not disputed by the Petitioner and, consequently, his challenge of that ordinance will be
7 dismissed.

8
9 Jurisdiction regarding the other two ordinances is challenged by the City based on
10 the lack of detailed statements of the issues and the lack of an allegation of noncompliance
11 with GMA requirements. The City observes the Petitioners' pleadings' one and only
12 reference to a GMA statute is RCW 36.70A.010, a section setting forth the Legislature's
13 findings in regards to the Growth Management Act.¹⁰ That statute is cited in the Re-Petition
14 For Review at paragraph 12, page 7 (filed March 7, 2014); no GMA statutory violation is
15 referenced in the Supplemental Petition For Review (filed March 10, 2014); and RCW
16 36.70A.010 is again referenced in the Statement of the Issues-Petition For Review at page
17 2 (filed March 11, 2014). The only possible allegation of a GMA violation appears in the third
18 of the above referenced pleadings where Petitioner alleges defective public notice and
19 inadequate public participation at page 2, although no statutes are cited. Even assuming
20 that was sufficient to constitute the required "detailed statement of the issues" alleging GMA
21 non-compliance, it was included in a pleading filed beyond the 60-day jurisdictional
22 window.¹¹

23
24
25 The Board understands the difficulty some petitioners have in complying with the
26 intricacies of the GMA. However, the Board cannot act except within the statutory
27 jurisdictional requirements set out by the Legislature in RCW 36.70A.280. Those

28
29
30 ⁸ RCW 36.70A.280(1)(a).

31 ⁹ Minutes of the Joint City Council/Planning Commission meetings of July 16 and November 12, 2013 include
32 Petitioner's testimony. Exs. 3 and 4 attached to the City's Motion to Dismiss.

¹⁰ *Litowitz v. City of Federal Way*, Case No. 96-3-0005, FDO, at 14: "RCW 36.70A.010 is not a substantive or
even a procedural requirement of the Act, and it creates no specific local government duty for compliance
apart from the subsequent goals and requirements of the Act."

¹¹ The City published notice of adoption of the ordinances on January 9, 2014. The sixtieth day following was
March 10, 2014.

1 requirements mandate that petitions for review include a detailed statement of issues, that
2 they be filed within 60 days of publication of notice of adoption, and allege non-compliance
3 with the requirements of the GMA. No detailed statement of issues was submitted and no
4 violations of the GMA were alleged on a timely basis.¹² The use of the statutory terms
5 “detailed” and “requirements” must be interpreted to obligate Petitioner to provide at least a
6 minimal legal citation to some enumerated requirement of the GMA codified in chapter
7 36.70A RCW. Because Petitioner failed to cite any sections of the GMA constituting a
8 “requirement,” the Petition for Review is not sufficient to invoke the Board’s jurisdiction.
9

10 The Board clearly has jurisdiction to consider challenges of comprehensive plan and
11 development regulations. It is also apparent Petitioner desires to challenge the City’s
12 adoption of a Comprehensive Sub-Area Plan and its implementing development regulations.
13 However, the Board concludes it is required to dismiss Petitioner’s challenge as he has
14 failed to properly invoke the Board’s jurisdiction.¹³
15

16 As referenced above, the Petitioner also named the Thurston Regional Planning
17 Council as a respondent.¹⁴ However, the Petitioner acknowledged during the Pre-Hearing
18 conference that service had not been effectuated on that entity and Petitioner stated during
19 that conference he was not sure whether he would pursue the Planning Council. WAC 242-
20 03-230(2).
21

22 Finally, Petitioner included statements in all of his pleadings requesting extensions of
23 time. An example is paragraph 11.5 of the initial pleading where it is stated:

24 Seeking Motion for Extension of Time as may be necessary with a showing
25 of good faith effort or as argued good cause, including, for lack of adequate
26 Notice by city to interested affected public at large. Seeking to be permitted
27 perfection of all jurisdictional elements as time allows.

28 The Board lacks the authority to waive the jurisdictional requirements of the GMA
29 and, therefore, the requested extension of time to perfect the pleadings must be denied.
30

31 ¹² In addition, the Petitioner failed to attach the applicable provisions of the ordinances being appealed to the
32 Petition for Review and failed to provide the Board with a copy of the entire document(s) being appealed within
thirty days of the filing of the Petition for Review in accordance with WAC 242-03-210(3).

¹³ The Board would disagree with the City’s suggestion that the Board lacks subject matter jurisdiction.

¹⁴ The Board questions whether or not that entity is a “state agency, county, or city planning under this
chapter”. However, that issue was not raised and the Board will not address it.

ORDER

Based on the foregoing, the Petitions for Review filed by John Wilson NFC, Case No. 14-2-0004, are hereby dismissed.

DATED this 23rd day of April, 2014.

William Roehl, Board Member

Nina Carter, Board Member

Raymond Paoella, Board Member

Note: This is a final decision and order of the Growth Management Hearings Board issued pursuant to RCW 36.70A.300.¹⁵

¹⁵ Should you choose to do so, a motion for reconsideration must be filed with the Board and served on all parties within ten days of mailing of the final order. WAC 242-03-830(1), WAC 242-03-840. A party aggrieved by a final decision of the Board may appeal the decision to Superior Court within thirty days as provided in RCW 34.05.514 or 36.01.050. See RCW 36.70A.300(5) and WAC 242-03-970. It is incumbent upon the parties to review all applicable statutes and rules. The staff of the Growth Management Hearings Board is not authorized to provide legal advice.